

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
ENVIRONMENT TEXAS CITIZEN LOBBY, INC., .
and SIERRA CLUB, .
Plaintiffs, .
VS. . Civil Action
No. H-10-CV-4969
EXXONMOBIL CORPORATION, . Houston, Texas
EXXONMOBIL CHEMICAL COMPANY, . February 20, 2014
and EXXONMOBIL REFINING AND SUPPLY . 10:16 a.m.
COMPANY, .
Defendants. .
.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID HITTNER
BENCH TRIAL
DAY 8 OF 13

APPEARANCES:
FOR THE PLAINTIFFS:
Mr. Joshua R. Kratka
Ms. Heather Govern
NATIONAL ENVIRONMENTAL LAW CENTER
44 Winter Street
4th Floor
Boston, Massachusetts
617.747.4333
917.710.5180
FAX: 617.292.8057
josh.kratka@verizon.net

Mr. David A. Nicholas
20 Whitney Road
Newton, Massachusetts 02460
617.964.1548
FAX: 617.663.6233
dnicholas@verizon.net

PROCEEDINGS RECORDED BY STENOGRAPHIC MEANS,
TRANSCRIPT PRODUCED FROM COMPUTER-AIDED TRANSCRIPTION

1 MR. NICHOLAS: Right. The 11 criteria that we've
2 occasionally discussed throughout the trial.

3 BY MR. NICHOLAS:

4 Q When you prepared STEERS reports, you selected whether the
11:35:31 5 affirmative defense was being asserted?

6 A Yes, sir.

7 Q And when you asserted the affirmative defense, you were
8 saying that the emission event met the affirmative defense
9 criteria?

11:35:37 10 A No. I was preserving the right to analyze the data. I
11 think the affirmative defense is something the state decides.

12 Q Oh, really? All right. So there's a form and you select
13 that there's a choice, right? There's a drop-down menu on the
14 affirmative defense box that says "yes" or "no," isn't there?

11:35:58 15 A Correct.

16 Q So you always put "yes"?

17 A I do.

18 Q Everybody at Exxon always puts "yes"?

19 A I can't speak for everybody at Exxon.

11:36:07 20 Q That's not something anybody discusses. You, on your own,
21 decided I'm going to check "yes" for the affirmative defense
22 every time I file a STEERS report.

23 A When I do something for Exxon, it's not on my own.

24 Q So somebody told you --

11:36:26 25 THE COURT: Hold it. Hold it down.

1 MR. NICHOLAS: I'm sorry?

2 THE COURT: Lower the volume, please.

3 BY MR. NICHOLAS:

4 **Q** So somebody told you to check " yes" every time you filed a
11:36:29 5 STEERS report?

6 MR. NICHOLAS: I'm sorry.

7 THE COURT: Well --

8 MR. NICHOLAS: It's happening all day.

9 THE COURT: If they lower the volume. However, you --
11:36:36 10 well, you can move the microphone if you want to.

11 MR. NICHOLAS: He's going to wrestle me down.

12 BY MR. NICHOLAS:

13 **Q** All right. So let's just be clear. Somebody told you to
14 always check the X box -- the "yes" box on the affirmative
11:36:49 15 defense; do I have that right?

16 **A** I don't think I can improve on the answer I gave earlier.

17 **Q** Oh, you can improve on it, and let me ask you another
18 question.

19 MR. NICHOLS: Your Honor, may we avoid the argument
11:36:59 20 between the lawyer and the witness?

21 THE COURT: Okay.

22 MR. NICHOLAS: All right.

23 THE COURT: Yes. Avoid it.

24 BY MR. NICHOLAS:

11:37:04 25 **Q** Let me just -- let me -- let me just be clear about it. No

1 one at Exxon instructed you to always check "yes"; do I have
2 that right?

3 **A** No one specifically instructed me to say "yes." We have
4 procedures and training on STEERS reports and so --

11:37:24 5 THE COURT: Okay. Is it -- is it -- I think we've
6 heard, earlier on, that it's routinely -- you say "yes."

7 THE WITNESS: Yes, sir, your Honor.

8 THE COURT: Is that a routine, just at Exxon, or in
9 your field?

11:37:34 10 THE WITNESS: I probably haven't benchmarked enough
11 with others to say what the routine is.

12 THE COURT: All right.

13 BY MR. NICHOLAS:

14 **Q** All right. But you don't know what other people at Exxon
11:37:42 15 do? Some people might. You don't know? You've never discussed
16 it with them.

17 THE COURT: I -- what my -- I was referring to other
18 companies. That's what I was referring to. I think that's how
19 you answered it, correct?

11:37:51 20 THE WITNESS: Correct. I have not -- I have not
21 compared our affirmative defense box checks to others in the
22 industry.

23 **Q** All right. So there's a "yes" and a "no," and you always
24 check "yes."

11:38:01 25 **A** Correct.

1 Q So you don't evaluate the 11 criteria at all before you
2 check the "yes" or "no" box?

3 A The state agency evaluates the 11 criteria.

4 THE COURT: Is that a trigger for them to do it? Is
11:38:21 5 that how it -- in your estimation, how it works? If you check
6 the "yes" box there's an automatic trigger of the 11 elements by
7 the state agency?

8 THE WITNESS: No, sir. My experience is they always
9 check the 11 elements whether I check the box "yes," "no," or
11:38:38 10 leave it blank.

11 BY MR. NICHOLAS:

12 Q So you, when you fill out the STEERS report, you never want
13 to say a condition of air pollution was caused by an emission
14 event, right?

11:38:58 15 A I wouldn't say that, no.

16 Q Oh, sometimes you do want to tell the state agency that a
17 condition of air pollution exists.

18 A What I say is I don't have enough information at the time
19 to say. Or, I think that --

11:39:12 20 Q Now, there's two weeks to fill out -- I'm sorry.

21 MR. NICHOLS: Your Honor, may the witness finish his
22 answer?

23 THE COURT: Yes, finish your statement.

24 THE WITNESS: Typically, there is a very detailed
11:39:19 25 investigation that follows the event that helps determine what

1 actions were taken with the facts surrounding the event or that
2 information is used in the affirmative defense.

3 BY MR. NICHOLAS:

4 **Q** Well, you -- all right. Well -- now, in fact you, even
11:39:46 5 though you're in charge of filing or were in charge of filing
6 STEERS reports, you weren't qualified to check off all of the
7 boxes anyway, correct? You didn't really have the competence to
8 assess all the 11 criteria?

9 **A** I would say I didn't have all the information. Well, I
11:40:07 10 think it's the state's assessment, not mine.

11 **Q** Well, let me -- I would like to ask you a question on a
12 specific STEERS event.

13 **A** Okay.

14 **Q** And this is in Defendants' Exhibit 30I and it is numbered
11:40:24 15 EONCS 00018267 through 18271, and this is a STEERS event for
16 the -- well, can you identify what plant this is in the Baytown
17 Complex?

18 **A** This is the Baytown refinery.

19 **Q** Are you sure about that? I believe that the Exxon refinery
11:40:53 20 is usually identified as ExxonMobil facility.

21 **A** I'm going off the address. It says 2800 Decker Drive,
22 Baytown, Texas.

23 **Q** All right. I stand corrected. And -- so you filled this
24 out, correct? That's you down here, Gary Robbins?

11:41:10 25 **A** Yes, that's me.

1 Q All right. And during this event sulfur dioxide was
2 emitted?

3 A Correct.

4 Q And 685 pounds of sulfur dioxide were emitted during this
11:41:30 5 event, and the emission limit was zero?

6 A Correct.

7 Q Right. Now, the affirmative defense was asserted for this
8 event, correct? I guess I don't need to show it to you because
9 you probably know that you automatically --

11:41:45 10 A I wouldn't mind if you showed it to me.

11 Q All right.

12 MR. NICHOLS: Your Honor, may we avoid the argument
13 back and forth?

14 THE COURT: Yeah. Let's go -- I want a question and
11:41:54 15 answer.

16 MR. NICHOLAS: All right.

17 BY MR. NICHOLAS:

18 Q So the affirmative defense was marked "yes"?

19 A Correct.

11:41:58 20 Q Now, so even if you wanted to make your own determination
21 of whether the affirmative defense applied, you don't know what
22 the health effects of breathing sulfur dioxide can be, correct?

23 A Correct.

24 Q And as a matter of fact, with the various other
11:42:29 25 contaminants listed on this STEERS report, you don't even know

1 why the government regulates the air contaminants listed in this
2 STEERS report, correct?

3 **A** I think that's incorrect. I have a general understanding
4 of why some of these things are limited.

11:42:45

5 **Q** Well, let's take a look at -- all right. Now, in your job
6 you work with a variety of pollutants, correct? In your role as
7 a -- when you work on permitting issues?

8 **A** Correct.

11:43:16

9 **Q** And one of the one -- of the pollutants you work on is --
10 you work with are -- is NOx, nitrogen oxides?

11 **A** Correct.

12 **Q** And another pollutant you work with is ammonia, correct?

13 **A** Correct.

11:43:36

14 **Q** And one of the -- all right. I'm sorry. Let's just match
15 this up.

16 THE COURT: I'll tell you what. Before you do this,
17 we've been in session --

18 MR. NICHOLAS: Your Honor, I've all -- these are,
19 literally, my last few questions.

11:43:46

20 THE COURT: Oh, okay.

21 MR. HILDER: No, no, no.

22 THE COURT: That's fine. Go.

23 MR. NICHOLAS: All right. Well, we'll take a break.

11:43:54

24 MR. NICHOLS: Your Honor, he got overruled by his
25 co-counsel.

1 MR. NICHOLAS: I got overruled.

2 THE COURT: You may think you're not that close to
3 ending when you've got other reasons. But anyhow, check your
4 clock. We'll take a 15-minute break and then we'll pick up and
5 go right to about 1:05 or something like that.

11:44:00

6 (Court recessed at 11:44 a.m.)

7 (Court resumed at 12:02 p.m.)

8 BY MR. NICHOLAS:

9 Q All right, Mr. Robbins. Let's see. I was questioning you
10 about whether, even if you wanted to check off yes or no on the
11 affirmative defense box, that you weren't qualified to assess
12 all of the criteria, and I was going through a list of
13 pollutants --

12:02:49

14 MR. NICHOLS: Your Honor, that sounds -- can we ask to
15 go question and answer? That sounded like an argument to me.

12:03:12

16 THE COURT: Overruled.

17 BY MR. NICHOLAS:

18 Q All right. So now, in this event that we've been
19 discussing, ammonia was released in this emission event. 76
20 pounds; do I have that right?

12:04:11

21 A Right.

22 Q And the emission limit is zero?

23 A Correct.

24 Q And one of the pollutants you deal with in your -- when you
25 have your permitting hat on is ammonia?

12:04:21

1 **A** Correct.

2 **Q** But you don't know why the government regulates ammonia, do
3 you?

4 **A** I think they consider it to be an air pollutant; that's why
5 they regulate it.

12:04:41

6 **Q** Right. But beyond the fact that it's an air pollutant, you
7 don't know why the government regulates ammonia; do I have that
8 right?

9 **A** I don't know its toxicological, epidemiological effects,
10 correct.

12:04:55

11 **Q** All right. So you deal with permitting and you fill out
12 STEERS reports. Both deal with ammonia, but you don't know what
13 the health effects of ammonia are, correct?

14 **A** Correct.

12:05:06

15 **Q** So you are filling out these -- so even if you wanted to
16 check "no" or decided you wanted to select either yes or no as
17 opposed to always check "yes" on the affirmative defense, you
18 wouldn't be able to assess what the health effect of that
19 emission release is because you don't know what the health
20 effects of ammonia are, correct?

12:05:24

21 **A** I think it's more than health effects, but that's generally
22 correct.

23 **Q** Now, you are -- let's see. In this emission event,
24 nitrogen -- excuse me, hydrogen sulfide was emitted, and -- do I
25 have that right? 61 pounds? Yeah. 61 pounds, and their limit

12:05:43

1 was zero, correct?

2 **A** That's incorrect.

3 **Q** Oh, I'm sorry. That's hydrogen cyanide. All right. So
4 685 pounds of sulfur dioxide were emitted during this emission
12:06:05 5 event, correct?

6 **A** Correct.

7 **Q** And again, you don't know what the health effects are of
8 sulfur dioxide, correct?

9 **A** Not in the -- not in the epidemiological --

12:06:15 10 THE COURT: Just hold it. Yes, sir.

11 MR. NICHOLS: The question has been asked and
12 answered.

13 THE COURT: Overruled.

14 BY MR. NICHOLAS:

12:06:20 15 **Q** You can answer.

16 **A** No, not -- I do not.

17 **Q** And you deal with sulfur dioxide when you deal with
18 permitting issues at the complex; is that right?

19 **A** Yes.

12:06:37 20 **Q** So even though you deal with permitting and deal with
21 emission events that involve sulfur dioxide, you don't know what
22 the health effects of sulfur dioxide are.

23 MR. NICHOLS: Your Honor, that's definitely asked and
24 answered.

12:06:48 25 THE COURT: Overruled.

1 THE WITNESS: No, in the same sense I mentioned
2 earlier.

3 BY MR. NICHOLAS:

4 Q So even if you wanted to actually make a selection of yes
12:06:56 5 or no in the affirmative defense box for an emission event, you
6 wouldn't be able to do it because you would not be able to
7 assess the health impacts or other effects of sulfur dioxide
8 that were emitted during the event, correct?

9 A Correct.

12:07:12 10 Q Okay. In this event particulate matter was emitted?

11 A Correct.

12 Q And 44 pounds were emitted and the limit was zero?

13 A Correct.

14 Q And you deal with particulate matter when you have your
12:07:34 15 permitting hat on?

16 A Yes, sir.

17 Q You don't know the health effects of particulate matter,
18 correct?

19 A Correct.

12:07:38 20 Q So when you -- even if you wanted to select yes or no in
21 the affirmative defense box for an emission event, you would not
22 be able to do so because you are not able to assess the health
23 effect or the health impact of an emission event that involves
24 particulate matter, correct?

12:07:57 25 A Correct.

1 Q Now, nitrogen oxide was also emitted in this emission
2 event, correct?

3 A Correct.

4 Q And 24 pounds were emitted and the limit was zero.

12:08:25

5 A Correct.

6 Q And then when you work on permitting issues for the Baytown
7 Complex you work with nitrogen oxide?

8 A Typically is was nitrogen oxides, plural.

9 Q NOx?

12:08:39

10 A NOx.

11 Q Right. You don't know what the health effects of emitting
12 nitrogen oxide are, correct?

13 A Correct.

14 Q So even if you wanted to check off yes or no in the

12:08:50

15 affirmative defense box on an emission event involving nitrogen
16 oxide or NOx, you wouldn't be able to do so because you wouldn't
17 be able to assess the health effect or health impact of the NOx
18 emission, right?

19 A Correct.

12:09:41

20 Q Mr. Robbins, you're familiar with the affirmative defense
21 rule, correct?

22 A Correct.

23 Q You've read it?

24 A Yes, I have.

12:09:48

25 Q You understand it?

1 **A** Yes, I do.

2 **Q** I'm going to show you a copy of 30 Texas Administrative
3 Code Section 101.222, and I believe, just by me giving you
4 those -- that site, you probably recognize that as the
5 affirmative defense rule or the affirmative defense provisions
6 of the code?

7 **A** Not specifically, but it is right in that same section, if
8 it's not that identical.

9 **Q** All right. Now, let's take a look at this. This is (b),
10 all right? Do you recognize this?

11 **A** Yes, sir.

12 **Q** All right. Now, it says here in subsection (b), "upset
13 events," or -- okay. It says -- excuse me. Let me back up.
14 "Non-excessive upset events. Upset events that are determined
15 not to be excessive emissions events are subject to an
16 affirmative defense to all claims and enforcement actions
17 brought for these events other than claims for administrative
18 technical orders and actions for injunctive relief, for which
19 the owner or operator proves all of the following."

20 Now, this is not news to you, right? You've seen
21 this before?

22 **A** Yes, I have.

23 **Q** All right. Now -- so the burden is on Exxon to prove the
24 affirmative defense for a reportable emission event, right?

25 **A** I would say that's correct.

1 Q But you automatically check off the box "yes" for every --
2 for -- you automatically check off the "yes" box for the
3 affirmative defense in every STEERS report, correct?

4 A Correct.

12:11:42 5 Q And in -- by the way, there's an initial report and you
6 check the box off "yes" there, right?

7 A Correct.

8 Q Then you have two weeks to make corrections to the report,
9 correct?

12:11:53 10 A Correct.

11 Q But you keep the "yes" box checked for the final STEERS
12 report after two weeks, right?

13 A Correct.

14 Q And that's -- you do -- as your practice, you do that
12:12:01 15 automatically, correct?

16 A Correct.

17 Q All right. So when you were -- you earlier testified that
18 you just checked the -- you checked the "yes" box and you want
19 TCEQ to do the work to determine whether or not the affirmative
12:12:19 20 defense applies, right?

21 A Yes, we have to prove it to them.

22 Q But you don't -- but you don't feel that you have to prove
23 it before you check the box yes or no?

24 A I don't feel like I have the authority to prove it.

12:12:30 25 Q Okay. And the authority from your bosses?

1 **A** No, the authority of the agency.

2 **Q** So you interpret that to mean that TCEQ does not allow you
3 to check the box "no," even though on their form they provide
4 you a yes or no option?

12:12:48 5 **A** Incorrect.

6 **Q** Well, you -- there's a yes or no option, correct?

7 **A** Correct.

8 **Q** Right. And so if Exxon wanted to it could evaluate whether
9 or not the affirm -- all of the 11 affirmative defense criteria

12:13:06 10 apply, correct?

11 **A** It's not our decision to determine whether or not they
12 apply.

13 **Q** It's your decision to assert it, correct?

14 **A** Correct.

12:13:19 15 **Q** And then you have to prove it, correct?

16 **A** Correct.

17 **Q** So let's just go down it. So, in other words, when you
18 fill out a STEERS event that's submitted to TCEQ, there are 11
19 criteria that -- well, let me back up. There are 11 criteria

12:13:42 20 that have to be satisfied to meet the affirmative defense,
21 correct?

22 **A** To the agency's satisfaction.

23 **Q** And by asserting an affirmative defense, Exxon is saying
24 the 11 criteria apply, correct?

12:13:57 25 **A** Correct.

1 Q And then -- however, when you submit the STEERS report and
2 you check the box "yes" for the affirmative defense, Exxon has
3 not actually determined whether it satisfies the first criteria,
4 correct, which is --

12:14:18

5 A Correct. The agency determines that.

6 Q So in other words, you do not determine, before asserting
7 this -- before asserting the affirmative defense, you don't
8 determine whether or not you reported the emission event
9 correctly?

12:14:35

10 A I still don't see how I can improve on the answers I've
11 given over and over.

12 MR. NICHOLS: Your Honor, I'll object to the question
13 as not making any sense because he's talking about checking a
14 box on the very report that's referred to in the affirmative
15 defense. So, your Honor, I'll object to the question as --

12:14:49

16 THE COURT: Rephrase the question.

17 BY MR. NICHOLAS:

18 Q Well, before checking the box "yes," all right, you do not
19 determine whether or not you satisfied the first criteria,
20 correct?

12:15:03

21 A Correct.

22 Q And the second criteria to meet the affirmative defense is
23 that the unauthorized emissions were caused by a sudden,
24 unavoidable breakdown of equipment or process beyond the control
25 of the owner or operator. Exxon does not determine whether that

12:15:15

1 condition has been fulfilled before it asserts the affirmative
2 defense, correct?

3 **A** Correct.

4 **Q** Exxon -- excuse me. Exxon does not determine whether the
12:15:34 5 third criteria is satisfied, which is that the unauthorized
6 emissions did not stem from any activity or event that could
7 have been foreseen and avoided or planned for and could not have
8 been avoided by better operation and maintenance practices or
9 technically feasible design consistent with good engineering
12:15:53 10 practice. Exxon does not determine whether or not that
11 criterion is satisfied before it asserts the affirmative
12 defense, correct?

13 **A** Correct.

14 **Q** Nor does it determine whether Criterion 4 is satisfied
12:16:13 15 either, does it, which is the air pollution control equipment or
16 processes were maintained and operated in a manner consistent
17 with good practice for minimizing emissions -- in a manner
18 consistent with good practice for minimizing emissions and
19 reducing the number of emission events. Exxon does not
12:16:33 20 determine whether or not that criterion is satisfied before it
21 asserts the affirmative defense, correct?

22 **A** Correct.

23 **Q** The fifth criteria in order to -- the fifth criteria is
24 prompt action was taken to achieve compliance once the operator
12:16:52 25 knew or should have known that applicable emission limitations

1 were being exceeded and any necessary repairs were made as
2 expeditiously as possible. Exxon does not determine whether it
3 fulfilled that criterion before it asserts the affirmative
4 defense, correct?

12:17:11 5 **A** I think it's the agency's responsibility, correct.

6 **Q** The sixth criterion is the amount and duration of the
7 unauthorized emissions and any bypass of pollution control
8 equipment were minimized and all possible steps were taken to
9 minimize the impact of the unauthorized emissions on ambient air

12:17:31 10 quality. Exxon does not determine whether that criterion was
11 met before it asserts the affirmative defense, correct?

12 **A** Correct.

13 **Q** Number seven, all emission monitoring systems were kept in
14 operation, if possible. Exxon does not determine whether that

12:17:50 15 criterion was met before it asserts the affirmative defense,
16 correct?

17 **A** Correct.

18 **Q** Number eight, the owner operator -- the owner or operator
19 actions in response to the unauthorized emissions were

12:18:06 20 documented by contemporaneous operation logs or other relevant
21 evidence. Exxon does not determine whether that criterion is
22 met before it asserts the affirmative defense, correct?

23 **A** Correct.

24 **Q** Number nine, the unauthorized emissions were not part of a
12:18:21 25 frequent or recurring pattern indicative of inadequate design,

1 operation, or maintenance. Exxon does not determine if that
2 criterion is satisfied before it asserts the affirmative
3 defense, correct?

4 **A** Correct.

12:18:35

5 **Q** Number ten, the percentage of a facility's total annual
6 operating hours during which unauthorized emissions occurred was
7 not unreasonably high. Exxon does not determine whether that
8 criterion was satisfied before it meets the -- before it asserts
9 the affirmative defense, correct?

12:18:53

10 **A** Correct.

11 **Q** And the last criterion is the unauthorized emissions did
12 not cause or contribute to an exceedance of the National Ambient
13 Air Quality Standard's prevention of significant deterioration
14 increments or to a condition of air pollution. Exxon does not
15 determine whether that criterion is satisfied before it asserts
16 the affirmative defense, correct?

12:19:15

17 **A** Correct.

18 **Q** So, Mr. Robbins, when you assert the affirmative defense --
19 let's go back to the -- let's go back to the box. You're

12:20:38

20 asserting that the affirmative defense -- excuse me, you're
21 asserting that in this -- in this emission event -- and I'm back
22 on, I believe, 30I, page 18268. When you're asserting that
23 Exxon meets the applicable affirmative defense criteria, when
24 you're -- making an -- when you're asserting that, that is a
25 false statement, isn't it?

12:21:07

1 **A** Incorrect.

2 **Q** Even though you -- we've just gone through this list of 11
3 criteria. You just testified that you didn't look into any of
4 them and yet you're still -- and yet you claim that this
12:21:28 5 statement, that Exxon meets all of the criteria, you're
6 asserting that that is a true statement?

7 THE COURT: Hold it a second.

8 MR. NICHOLS: Objection. First of all, it
9 mischaracterizes the language of the document that he's
12:21:41 10 referring to, it's argumentative, it's repetitive, and I'm sure
11 it has other defects as well, your Honor.

12 THE COURT: Yes, sir.

13 MR. NICHOLAS: I disagree with all of that.

14 THE COURT: Haven't we been over that already?

12:21:54 15 MR. NICHOLAS: I would like the witness to --

16 THE COURT: You want to sum it up in one question?

17 MR. NICHOLAS: Yeah.

18 THE COURT: All right, go on.

19 MR. NICHOLAS: All right. I would like --

12:22:02 20 THE COURT: Do you want that read back?

21 MR. NICHOLAS: I -- well, read back, yes.

22 THE COURT: All right. We're going to have it read
23 back. It's going to sum up his line of questioning.

24 (The last question was read.)

12:22:44 25 MR. NICHOLS: And that's the nature of my question; he

1 has mischaracterized the nature of what is --

2 THE COURT: It's sustained as to the form. Sustained
3 just as to the form.

4 I mean, I'll allow you to do -- I'll allow you to
12:23:00 5 do a wrap-up question if you want to, but I need it -- as to
6 form, I sustain the objection, sir.

7 MR. NICHOLAS: All right.

8 BY MR. NICHOLAS:

9 Q I think I can simplify this. On page 18268 of the exhibit
12:23:42 10 we've been talking about, in this form the affirmative defense
11 box says: "The owner or operator of the regulated entity
12 asserts this reported event or activity as applicable meets the
13 applicable affirmative defense criteria." And in this case you
14 checked the box "yes." That's a false statement, is it not?

12:24:09 15 MR. NICHOLS: Your Honor, that has been asked and
16 answered. He's already said it, that in his view it is not.

17 THE COURT: Overruled. Overruled.

18 If you can't answer it yes or no, sir, just so
19 state and they'll either have to rephrase or we'll leave it
12:24:24 20 right there. Can you answer that yes or no?

21 THE WITNESS: I can't remember if there was a double
22 or triple negative in there.

23 Could you ask it again?

24 BY MR. NICHOLAS:

12:24:33 25 Q Is this a false statement, checking off the box "yes" in

1 the affirmative defense?

2 **A** It is a true legal statement.

3 **Q** And you asserted the affirmative defense even though you
4 did not go through any of the 11 criteria to determine whether,
5 in fact, the company meets the affirmative defense, correct?

12:24:45

6 MR. NICHOLS: Objection. Asked and answered, your
7 Honor.

8 THE COURT: Sustained.

9 MR. NICHOLS: Right.

12:24:54

10 BY MR. NICHOLAS:

11 **Q** Now, Mr. Robbins, I believe you -- you testified that TCEQ
12 would investigate the company on an emission event whether Exxon
13 asserts the -- whether the -- whether the company checks "yes,"
14 "no," or leaves the box blank on the affirmative defense; do you
15 recall that?

12:25:19

16 **A** They investigate all reportable events.

17 **Q** But you've never checked the box "no," have you?

18 **A** I don't recall that. I don't think I ever have, correct.
19 I think I've always checked it "yes."

12:25:32

20 **Q** Now, do you receive -- did you receive training on how to
21 fill out the STEERS forms?

22 **A** I may have given training but I don't remember specifically
23 receiving it.

24 **Q** And when you give training, do you train people to always
25 check the box "yes" on the affirmative defense?

12:25:59

1 **A** I don't recall that, no.

2 **Q** I'm sorry. Did you say you don't recall being trained or
3 you were not trained for the -- to fill out these STEERS
4 reports?

12:26:13 5 **A** I don't recall being trained.

6 **Q** How long have you been in your department?

7 **A** Since 2000.

8 **Q** And is there a regular program to train people on how to
9 fill out STEERS reports?

12:26:25 10 **A** Yes.

11 **Q** So people are -- people in your department are trained,
12 correct?

13 **A** Correct.

14 **Q** But you have no memory or recollection of being trained
15 yourself?

12:26:33

16 **A** Correct.

17 **Q** Now, you're familiar with the Houston Regional Monitoring
18 Corporation?

19 **A** Yes, I am.

12:26:58 20 **Q** Sometimes it's called HRM?

21 **A** Correct.

22 **Q** The HRM Corporation is a consortium of industry partners
23 that operate air monitoring stations in the Houston area?

24 **A** Correct.

12:27:10 25 **Q** Exxon is one of the industry partners in the consortium?